No. 219

No. 13,219.

United States Court of Appeals

FOR THE SIXTH CIRCUIT.

LIBRARY
SUPREME COURT, U. S.

FRANK CUIKSA,

Plaintiff-Appellant,

vs.

THE CITY OF MANSFIELD, *et al.*,

Defendants-Appellees.

CIVIL ACTION No. 30,569.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

BRIEF AND APPENDIX OF APPELLANT.

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STATEMENT OF QUESTIONS INVOLVED.

(1) Is a municipality liable, as a part of the State, under Title 42, Section 1983 U. S. C. A. to the individual injured, when it deprives him of the right to liberty secured to the individual under the Constitution and laws of the United States, by suit of the individual under the statute?

The District Court impliedly answered this question "No." The appellant, Frank Cuiksa, contends that it should be answered "Yes."

(2) Is a state judge liable for depriving an individual of the rights secured to the individual by the Constitution and laws of the United States, by action under Statute Title 42, Section 1983 U. S. C. A.?

The District Court impliedly answered this question "No." The appellant, Frank Cuiksa, contends that it should be answered "Yes."

TABLE OF CONTENTS.

Statement of Questions Involved ..... Prefixed

Statement of Facts 1

Argument 3

(1) Is a municipality liable, as a part of the State, under Title 42, Section 1983 U. S. C. A. to the individual injured, when it deprives him of the right to liberty secured to the individual under the Constitution and laws of the United States, by suit of the individual under the statute? 3

(2) Is a state judge liable for depriving an individual of the rights secured to the individual by the Constitution and laws of the United States, by action under Statute Title 42, Section 1983 U. S. C. A.? 6

Relief 11

TABLE OF AUTHORITIES.

Cases.

Beckham vs. Cline, 145 A. L. R. 705 9

Burt vs. N. Y., 156 Fed. 2nd 791 11

Chattanooga Foundry vs. Atlanta, 203 U. S. 390 5

Cohen vs. Virginia, 19 U. S. 264 4

Cole vs. Arkansas, 333 U. S. 196 7

Cooke vs. U. S., 267 U. S. 274 7

Crawford vs. Brown, 45 A. L. R. 1457 9

Erie Railroad vs. Tompkins, 304 U. S. 64 5

Georgia vs. Evans, 316 U. S. 159 4

Kalb vs. Feuerstein, 308 U. S. 433 6

Kenny vs. Fox, 232 Fed. 2nd 288 ..... 1, 9, 11

Kilbourn vs. Thompson, 103 U. S. 168, 26 L. Ed. 377 10

Lane vs. Wilson, 307 U. S. 268 11

Manning vs. Ketchum, 58 Fed. 2nd 948 11

Marshall vs. Gordon, 243 U. S. 521, 61 L. Ed. 881; 37 S. Ct. 448, L. R. A. 1917 F. 279, Am. Cases 1918 B 371 10

Maxwell vs. Maxwell, 10 A. L. R. 482 9

McCullough vs. Maryland, 4 Wheat. 316 5

McGrain vs. Daugherty, 273 U. S. 135, 176, 71 L. Ed. 580, 47 S. Ct. 319, 50 A. L. R. 1 10

Ohio vs. Helvering, 292 U. S. 360 4

Oliver, Re, 333 U. S. 257 7

Pickings vs. Penna. R. R. Co. et al., 151 Fed. 2nd 240 11

Powell vs. Alabama, 287 U. S. 45 7

Smoot vs. Kentucky, Cent. R. Co., 13 Fed. 337 5

Sola Electric Co. vs. Jefferson Elect. Co., 317 U. S. 173 ..... 5, 10

Tenny vs. Brandhove, 341 U. S. 367 9

U. S. vs. California, 297 U. S. 175 6

U. S. ex rel. Marcus vs. Hess, 317 U. S. 537 5

U. S. vs. Patrick, 54 F. 338 5

Virginia, Ex parte, 100 U. S. 346 ..... 5, 10

W. V. Board of Education vs. Barnette, 319 U. S. 64 6

Constitution.

Constitution of the United States:

Article 6, Cl. 2 6

Fourteenth Amendment, Sec. 1 ..... 4, 7, 9, 10

Statutes.

Ohio Revised Code:

Sec. 2935.03 (G. C. 13432-1) 8
Sec. 2935.05 (G. C. 13432-3) 8
Sec. 2935.11 (G. C. 13432-9) 8
Sec. 2935.20 (G. C. 13432-19) 8
Sec. 2937.02 (G. C. 13433-1) 7

42 U. S. C. A. 1983 (formerly 8 U. S. C. A. 43) 1, 3, 4, 6

TABLE OF CONTENTS OF APPENDIX.

(Attached.)

Relevant Docket Entries 1a

Complaint (Oct. 1, 1953) 3a

Interrogatories to the Plaintiff (In Part) (Nov. 12, 1954) and Answers Thereto (Dec. 31, 1954) 8a

Deposition of Frank Cuiksa (June 23, 1955) 14a

Motion of Defendant the City of Mansfield for Summary Judgment Under Rule 56 (Sept. 7, 1956) 15a

Order Dismissing Complaint (Feb. 6, 1957) 16a

No. 13,219.

United States Court of Appeals

FOR THE SIXTH CIRCUIT.

FRANK CUIKSA,

Plaintiff-Appellant,

vs.

THE CITY OF MANSFIELD, *et al.*,

Defendants-Appellees.

CIVIL ACTION No. 30,569.

APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

BRIEF OF APPELLANT.

STATEMENT OF FACTS.

Appellant brought an action against the City of Mansfield, where he had been arrested under a void ordinance and accepted into its jail without due process of law, and Glenn W. Marriott, the Judge of the Municipal Court of Mansfield, who conducted a trial which convicted appellant without due process of law, under the Civil Rights Act, formerly Title 8 U. S. C. A. 43, now Title 42 U. S. C. A. 1983; motions for summary judgment of defendants claiming sovereign immunity and judicial immunity were filed and sustained by the District Court upon authority of *Kenny vs. Fox,* 232 Fed. 2nd 288. This appeal results.

The City of Mansfield is a Municipal Corporation of the State of Ohio (3a); that it accepted and held appellant in its prison without process or commitment (4a) which

was not fit for human occupancy (4a); and this was done under a void ordinance, Section 200 (4a), which is not within the power of the city to enact, and which is vague and uncertain and does not give notice to the citizen of what is commanded or forbidden (4a, 9a, 10a).

Glenn W. Marriott is the Judge of the Municipal Court of Mansfield (3a). The appellant was arrested or seized on November 6, 1950, without any warrant for a claimed misdemeanor under this void ordinance; he was not taken before any magistrate but incarcerated in the Mansfield City Prison after being struck and pushed around, his demands for a doctor being refused (4a, 10a, 14a).

On November 7, 1950, an affidavit was filed in Municipal Court, under Section 200 of the ordinances of the City of Mansfield, and which did not set forth any facts constituting a crime. No notice of what he was charged with was furnished appellant; no warrant was issued, executed or returned (5a).

Appellee Marriott called upon him to plead without any warrant being returned, who berated him for not pleading guilty and informed him that he could not win a case in his Court (12a, 15a). A jury was impanelled illegally, and the challenge to the array of jurors was overruled (52, 11a, 12a). The witnesses were required to give their opinions of the guilt of the appellant to the jury and to usurp the function of the jury in determining the facts and innocence of the appellant (5a).

Appellee Marriott did not charge as to drunken behavior, but did charge that it is enough if he is so far affected as to render him unfit and disqualified for the performance of ordinary callings—then giving a list of skilled and professional acts, such as prescribing as a physician, or the giving of advice as a lawyer (6a), there

was no evidence that he was competent to do any of these things when sober.

Appellant was subjected to two jury trials, covering four trial days and fined $50.00 and costs.

Appellant was deprived of many things retained by him under the Constitution, to his injury (5a, 9a, 13a, 14a).

ARGUMENT.

(1) Is a municipality liable, as a part of the State, under Title 42, Section 1983 U. S. C. A. to the individual injured, when it deprives him of the right to liberty secured to the individual under the Constitution and laws of the United States, by suit of the individual under the statute?

The District Court impliedly answered this question "No." The appellant, Frank Cuiksa, contends that it should be answered "Yes."

Is the state and its municipalities included in the term "every person" as used in the Civil Right Statute, Title 42, Section 1983, when it, by its own acts, deprives an individual of his right to liberty in violation of the Constitution and laws of the United States?

The record shows that this action resulted from an imprisonment upon an ordinance which was void for want of compliance with the laws of the State of Ohio, and not within the powers granted to the municipality, and which was too vague to define a crime.

The record shows that the City incarcerated this appellant without any process or writ from any committing magistrate, and solely on the direction of the arresting officer, in its prison which was kept in foul condition, and no warrant was ever served.

Title 42, U. S. C. A. 1983, formerly Title 8, Section 43, reads as follows:

> "§ 1983: *Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Whether the term "every person" includes the state and its subdivisions depends on its legislative environment. *Ohio vs. Helvering*, 292 U. S. 360; *Georgia vs. Evans*, 316 U. S. 159.

"The consent of the state to suit is not requisite in each case. It may be given in a general law. By being one of the United States, the state has surrendered the sovereign right of judging in every case on the justice of its own pretensions, when the action arises under the Constitution and laws of the United States." (*Cohen vs. Virginia*, 19 U. S. 264.)

Congress was authorized to enact this statute by the Fourteenth Amendment; the pertinent parts of which read as follows:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Only states are mentioned in this amendment, as being prohibited in these actions as to the subject matters included in it.

Congress has power to give an action for damages to an individual who suffers by breach of the law. *United States, ex rel. Marcus vs. Hess*, 317 U. S. 537; *Chattanooga Foundry vs. Atlanta*, 203 U. S. 390. By the Civil Rights Act, Congress has given an action against the states and their subdivisions in favor of the injured individual when they violate the Constitution and laws of the United States securing the rights retained by him as an individual to his injury. This is the only method Congress has provided for enforcement of the Constitution against the States.

Enforcement of the prohibition of this amendment is no invasion of state sovereignty, as no law can be, which the people of the state have, by the Constitution empowered Congress to enact. *Ex parte Virginia*, 100 U. S. 346; *U. S. vs. Patrick*, 54 F. 338; *Smoot vs. Kentucky, Cent. R. Co.*, 13 Fed. 337. This conduct being prohibited by the Amendment, it cannot be considered as a governmental function of the state; it is forbidden conduct.

The prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules. Such cases are not controlled by *Erie Railroad vs. Tompkins*, 304 U. S. 64; when a federal statute condemns an act as unlawful the extent and nature of the legal consequences are federal questions, to which conflicting state law and policy must yield. *Sola Electric Co. vs. Jefferson Elect. Co.*, 317 U. S. 173; *McCullough vs. Maryland*, 4 Wheat. 316.

None who act under the color of the law are beyond the reach of the Constitution; *W. V. Board of Education vs. Barnette*, 319 U. S. 64. The equity jurisdiction under the Civil Rights Act is often exercised against the state and its subdivisions and sustained, under these statutes; here relief is being asked against the appellees under both law and equity.

The sovereign powers of the state is necessarily diminished to the extent of the grants of power to the Federal Government in the Constitution, and sovereignty cannot be claimed in an action given by Congress involving the state, *U. S. vs. California*, 297 U. S. 175.

(2) Is a state judge liable for depriving an individual of the rights secured to the individual by the Constitution and laws of the United States, by action under Statute Title 42, Section 1983 U. S. C. A.?

The District Court impliedly answered this question "No." The appellant, Frank Cuiksa, contends that it should be answered "Yes."

The record shows that appellee Marriott was entirely without jurisdiction, the ordinance was void, the affidavit void, no statutory notice was given to appellant, no warrant being executed or returned, the jury was not a legal jury, the evidence usurped the functions of the jury, and upon a charge which gave the jury no standard of conduct from which a crime could be determined.

A state judge is bound to obey the Constitution and laws of the United States, Art. 6, Cl. 2, Constitution, and a judgment rendered in violation of Art. 6, Cl. 2, is a nullity and subject to collateral attack and the state judge may be liable therefor. *Kalb vs. Feuerstein*, 308 U. S. 433.

The entire proceeding in the state trial is void for want of due process of law. Judge Marriott did not have jurisdiction for want of any subject matter, the ordinance being void, no charge could be made under it. Judge Marriott did not have jurisdiction over the person of this appellant, for the want of any process at all, in the state of Ohio judicial due process commences when the accused is taken before a court and a warrant has been returned. The essential part of R. C. 2937.02 formerly G. C. 13433.1 reads:

> "When an accused is taken before a court or magistrate and a warrant has been returned, such court or magistrate shall inform him of the charge against him and of his right to have counsel, and with the consent of the accused, may proceed forthwith to examine into the merits of the charge." * * *

No principle of procedural due process is more clearly established than that notice of the specific charge and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. *Re Oliver*, 333 U. S. 257-273; *Powell vs. Alabama*, 287 U. S. 45; *Cole vs. Arkansas*, 333 U. S. 196-200; *Cooke vs. U. S.*, 267 U. S. 274.

When the statutes in Ohio are obeyed by the judges and officers of the state, they are probably adequate to meet the minimum requirement of due process in misdemeanor cases, and satisfy the prohibition of the 14th Amendment.

A police officer cannot lawfully incarcerate a person in Ohio, the person must be immediately taken before a court or magistrate having jurisdiction, a complaint made, a warrant issued, if the arrest is on view the warrant can

be issued only by the judge or magistrate, and the accused is then served with the warrant, and has an opportunity to provide bail, and is substantially in accordance with the common law, when complied with.

R. C. 2935.03, formerly G. C. 13432-1:

"A sheriff, deputy, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of municipal corporation, until a warrant can be obtained." * * * .

R. C. 2935.05, formerly G. C. 13432-3:

"When a sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer has arrested a person without a warrant, he must, without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested."

R. C. 2935.11, formerly G. C. 13432-9:

"When an affidavit charging a person with the commission of an offense is filed with a judge, clerk, or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused." * * *

In Ohio, the warrant is the only written notice to the accused of the charges he is to answer, and upon its execution and return the only pleading upon which the jurisdiction of the court is invoked.

R. C. 2935.20, formerly 13432-19:

"A warrant shall contain a copy of the affidavit inserted therein, or annexed thereto, or shall recite the substance of the accusation and command the officer to whom issued, forthwith, to take the accused

and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law. The following form of warrant is sufficient." * * *.

In the case here, no warrant was ever issued, executed, and returned; no notice was given to the citizen of what he was charged with, and the jurisdiction of the court never invoked, and the matter unlawful from the beginning and continues to be unlawful.

There are many cases brought under the Civil Rights Act and dismissed, either because the subject matter or the facts do not bring them within the statute or the scope of the amendments. Such cases are a matter of state concern only, some involve detention under the lunacy laws, it is traditional that the state can extend its protection and benefits to these persons, for their protection and welfare, and this without due process of law under the 14th Amendment. *Maxwell vs. Maxwell*, 10 A. L. R. 482; *Crawford vs. Brown*, 45 A. L. R. 1457; but liability may arise as a state matter when the charge is false and the state procedure has not been observed. *Beckham vs. Cline*, 145 A. L. R. 705.

Such a case is *Kenny vs. Fox*, 232 Fed. 2nd 288, where the court upheld the dismissal upon the basis of no cause of action and then entered upon a discussion of the doctrine of judicial immunity, being of the firm opinion that the common law rule of immunity of a judicial officer for acts done in the exercise of his judicial function, where he has jurisdiction over both parties and the subject matter, has not been abrogated by the Civil Rights Act.

Much reliance is placed on the decision of *Tenny vs. Brandhove*, 341 U. S. 367, wherein the Supreme Court

held that no cause of action was plead, as the acts were within the sphere of legitimate legislative activity, the court further says:

"This court has not hesitated to sustain the rights of private individuals when it found Congress was acting outside its legislative role." *Kilbourn vs. Thompson*, 103 U. S. 168, 26 L. Ed. 377; *Marshall vs. Gordon*, 243 U. S. 521, 61 L. Ed. 881; 37 S. Ct. 448, L. R. A. 1917 F. 279, Am. Cases 1918 B 371; compare *McGrain vs. Daugherty*, 273 U. S. 135, 176, 71 L. Ed. 580, 593, 47 S. Ct. 319, 50 A. L. R. 1.

It appears that state matters not within the Federal Constitution are controlled by state law which may grant immunity, but that there can be no immunity in matters within the Federal Constitution. It is a familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or common law rules. *Sola Electric Co. vs. Jefferson Electric Co.*, 317 U. S. 173.

Enforcement of the 14th Amendment is within domain of Congress, even though it restricts state power. The Constitution now expressly gives authority for Congressional interference and compulsion in the cases embraced within the 14th Amendment. We do not perceive how holding an office under a state and claiming to act for the state can relieve the holder from obligation to obey the Constitution of the United States or take away the power of Congress to punish his disobedience. *Ex parte Virginia*, 100 U. S. 346. This case destroys any claim of judicial immunity for matters within the Federal Constitution, for the state judge sought his release from a criminal charge under the Civil Rights Act under the claim of immunity.

This was followed in *Pickings vs. Penna. R. R. Co. et al.*, 151 Fed. 2nd 240, which held state judges to be within the term "every person" as used in the statute and liable under the Act.

This court affirmed a judgment against a state judge, and defined when a judge was liable in *Manning vs. Ketchum*, 58 Fed. 2nd 948.

Kenny vs. Fox, can have no application in cases based upon the entire absence of jurisdiction over either the subject matter or the person of the defendant in the state court.

State court determinations cannot preclude the Federal Courts from determining federal questions, and the state courts need not be exhausted, and this action is a federal remedy. *Lane vs. Wilson*, 307 U. S. 268, *Burt vs. N. Y.*, 156 Fed. 2nd 791.

Wherefore, the order of dismissal of the District Court should and ought to be set aside and reversed.

RELIEF.

It is respectfully urged that the judgment of the District Court dismissing this action as to the Appellees be reversed and the action mandated to said court with instructions to overrule the Motions for Summary Judgment of these Appellees, and for further proceedings according to law.

Respectfully submitted,

H. M. Rust,

Attorney for Appellant.

CIVIL ACTION No. 30,569.

In the United States District Court

FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

FRANK CUIKSA,

Plaintiff,

vs.

THE CITY OF MANSFIELD, GLENN W. MARRIOTT, EDWARD G. VARGA, LAWRENCE HARPER, ALBERT O'NIEL and RICHARD TURNER,

Defendants.

RELEVANT DOCKET ENTRIES.

10/1/53. Complaint filed.

10/1/53. Summons issued. 6 copies of summons with copies of complaint issued to U. S. Marshal.

10/21/53. Summons retn. & filed. Served City of Mansfield, Ohio, Glenn W. Marriott, Edward G. Varga, Lawrence Harper, Albert O'Niel, and Richard Turner 10/19/53. Fees $27.00.

1/15/54. Motion for more definite statement with brief by defendant filed. Copy mailed 1/15/54.

3/4/54. Memorandum of opinion filed, Jones, J. (motion is denied) Copies to counsel.

3/8/54. Order that defendants' motion for a more definite statement is hereby denied filed. Jones, J. Noted 3/8/54. Copies to counsel.

6/8/54. Answer of Glenn W. Marriott filed. Copy mailed 6/8/54.

6/8/54. Answer of Edward G. Varga, Lawrence Harper, Albert O'Niel, and Richard Turner filed. Copy mailed 6/8/54.

6/8/54. Answer of City of Mansfield filed. Copy mailed 6/8/54.

11/12/54. Interrogatories of defendants filed. Copy served 11/11/54.

12/31/54. Answers to Interrogatories of Defendants by the Plaintiff filed. Copy mailed 12/30/54.

6/23/55. Deposition of Frank Cuiksa on behalf of defendant filed. Fees $49.75.

9/9/56. Request for trial filed.

9/7/56. Motion of the deft. City of Mansfield for Summary Judgment under Rule 56 filed. Copy mailed 9/7/56.

9/7/56. Brief in support of the above motion filed. Copy mailed 9/7/56.

9/7/56. Motion of the deft. Glenn W. Marriott for Summary Judgment under Rule 56 filed. Copy mailed 9/7/56.

9/7/56. Brief in support of the above motion filed. Copy mailed 9/7/56.

10/27/56. Brief of plaintiff opposing motion of City of Mansfield for summary judgment filed. Copy mailed 10/26/56.

10/27/56. Brief of plaintiff opposing motion of defendant Marriott for summary judgment filed. Copy mailed 10/26/56.

11/27/56. Motion of defendant Glenn W. Marriott for leave to file supplemental and reply brief in support of his motion for summary judgment filed. Copy mailed 11/27/56.

11/27/56. Motion of defendant The City of Mansfield for leave to file supplemental and reply brief in support of its motion for summary judgment filed. Copy mailed 11/27/56.

12/31/56. Brief in opposition of motion for leave of The City of Mansfield filed. Copy mailed 12/28/56.

12/31/56. Plaintiff's brief in opposition to defendant Glenn W. Marriott's motion for leave to file supplemental and reply brief filed. Copy mailed 12/28/56.

2/1/57. Endorsed ruling granting Motion of deft. City of Mansfield for leave to file supplemental brief, Connell, J.

2/1/57. Endorsed ruling granting Motion of deft. Marriott to leave to file supplemental and reply brief, Connell, J.

2/1/57. Endorsed ruling granting motion of deft. Marriott for summary judgment, Connell, J. Copies to counsel.

2/1/57. Endorsed ruling granting motion to deft. City of Mansfield for motion for summary judgment, Connell J. Copies to counsel.

2/1/57. Reply brief of deft. The City of Mansfield in support of its motion for summary judgment filed. Copy mailed 2/1/57.

2/1/57. Reply brief of deft. Glenn W. Marriott in support of his motion for summary judgment filed. Copy mailed 2/1/57.

2/6/57. Order granting motions of defendants Marriott and City of Mansfield for summary judgment and dismissing complaint as to said defendants filed, Connell, J. Noted 2/6/57. Copies to counsel.

3/4/57. Notice of Appeal filed. Copies mailed to counsel; Beam and Beam, and Jamison, Ulrich, Hope, Johnson & Burt.

3/4/57. Bond on Appeal filed (Cash).

COMPLAINT.

(Filed October 1, 1953.)

1. The plaintiff says that jurisdiction of this action is conferred upon this Court, by 28 F. C. A. 1343, 8 F. C. A. 42, 43, 47 and 48.

2. That the City of Mansfield is a Municipal Corporation, existing under the laws of the State of Ohio, Glenn W. Marriott is the duly, qualified and acting Judge of the Municipal Court of Mansfield, Edward G. Varga, Lawrence Harper, Albert O'Niel and Richard Turner are members of the Mansfield Police Department.

3. That the City of Mansfield has enacted and is enforcing the following ordinance:

> "Section 200. It shall be unlawful for any person to disturb the peace and good order of this City by unusual and unnecessary noise, or riotous, drunken or disorderly behavior or wrangling or quarreling."

4. That the City of Mansfield enacted such ordinance under the power delegated to Municipal Corporations by Section 3664 of the General Code of Ohio, and does not comply with such delegation of power, by requiring the intoxication or drunkenness to be in the streets and other public places to the annoyance of the citizens, and is beyond the scope of the powers delegated to Municipal Corporations.

5. That said ordinance is vague and uncertain using language of no determinative meaning, and which is not known to the law, and does not inform the citizen as to what is commanded or forbidden, and is not sufficiently explicit to inform those who are subject to it, what conduct on their part will render them liable to its penalties.

6. That on or about November 6, 1950, the plaintiff was arrested and seized by the defendants, Edward G. Varga, Lawrence Harper, Albert O'Niel and Richard Turner, acting as police officers without any warrant or process, for a claimed misdemeanor not committed in their presence, who beat, tortured, and jerked plaintiff about, and removed him to the Mansfield City Prison, a foul, noisome, loathsome and unsanitary place, not fit for human occupancy.

7. That said police officers did not take the plaintiff before a magistrate and obtain a warrant, but held him at said prison, where they searched, and shook him down, and threw him into a cell, the plaintiff demanded a doctor to care for and examine him, which demand was refused.

8. That on or about November 7, 1950, the following affidavit was filed in the Municipal Court of Mansfield by the defendant Edward G. Varga:

Before me, J. L. Fankhouser, Clerk of the Municipal Court, personally came Edward G. Varga, who being duly sworn, according to law, makes oath and says that on or about the 6th day of November, 1950, that one Frank Cuiksa, late of said City and County aforesaid, did violate, Section 200, Chapter 14, Ordinance 72, of the Revised and Codified Ordinances of the City of Mansfield, Ohio, in the manner and form following, to wit: Disturbing the peace and good order of the City by drunken behavior.

EDWARD G. VARGA.

That said affidavit does not set forth any facts constituting a crime, and no warrant was issued, executed and returned thereon.

9. That said Glenn W. Marriott, as judge of the Municipal Court of Mansfield, acting whimsically, arbitrarily and without jurisdiction in the premises, ordered the Clerk of the Court, by a Journal Entry, to list, impanel and subpoena a jury from Richland County, rule or rules of Court to the contrary notwithstanding, and which violated G. C. 13443 and/or G. C. 1579-997 and which juries were challenged as not being lawful juries, which challenge was over-ruled.

10. That said Glenn W. Marriott, as such judge of the Municipal Court of Mansfield, permitted and required; over the objections of this plaintiff, the police officers to give their opinions of the guilt of this plaintiff, and to usurp, supplant and abrogate, the function of the jury in determining the facts and innocence of the plaintiff from the testimony of the witnesses.

11. That the said Glenn W. Marriott, as such judge, over the objections of the plaintiff submitted the case to said jury without any evidence of the commission of any crime.

12. That the said Glenn W. Marriott, as such judge, then without giving the jury any charge or instructions as

to the requirements of the law as to drunken behavior, then proceeded to charge and instruct the jury in part as follows:

"A person may be said to be intoxicated when he is so much under the influence of intoxicating liquor that he is unfitted and disqualified from attending to and performing the usual duties and business of life."

* * * * *

"In order to be intoxicated, it is not necessary that the person should be so drunk as to be wholly without the ability to think or move; it is enough if he is so far affected as to render him unfit and disqualified for the performance of ordinary callings—so affected that it would be unsafe to trust him with the driving of a team, the care of a mill, the making of a contract, or the sale of property, with the steering of a steamboat, with the prescribing as a physician, or the giving of advice as a lawyer. A person so affected by intoxicating liquors is truly in a state of intoxication and can truly be said to be intoxicated."

"A person is also said to be under the influence of intoxicating liquor or to be drunk when some physical function or sense has been impaired by the use of drugs, alcohol, or other means by which the mental, physical, or both mental and physical functions of the body have been affected or impaired whereby he is rendered less able to perform the usual mental and physical functions of mind and body to the extent that his ability to think or act has rendered him unfit and disqualified from the performance of ordinary callings, such as doing the things and acts heretofore given you by the court."

13. That the defendant, Glenn W. Marriott, as such judge without jurisdiction in the premises, subjected this plaintiff to four (4) days of trial, before two different juries, and upon the second jury convicting the plaintiff, subjected him to a fine of $50.00, and court costs, and the case was then reviewed in the Courts of Ohio, until about

the 25th day of September, 1953, when such appeal was dismissed by the Court of Appeals of Richland County, Ohio, at the costs of this plaintiff including the bill of exceptions and attorney fees.

14. That this plaintiff has suffered serious injuries and disabilities from servicing in the armed services of the United States; and will upon his confinement in the Mansfield City Prison; a foul, noisome, unsanitary and loathsome place, unfit for human occupancy, require surgical, medicial, and hospital care and attention as well as police protection, which by the customs and usage of said City, will be refused and denied him by said City.

15. That all the acts of the defendants were wilful and malicious, and under the pretense and color of the statutes of Ohio, the Ordinance of the City of Mansfield, and the regulations of the Municipal Court of Mansfield, and all occurred in Mansfield, Richland County, State of Ohio, and subjected or caused to be subjected, the plaintiff a Citizen of the United States to the deprivation of his rights, privileges, immunities, liberty secured to him by the Constitution and laws of the United States.

Wherefore Plaintiff demands:

1. A trial by jury.

2. That ordinance Section 200, Chapter 14 of the City of Mansfield, be set aside as void and held for naught.

3. That the affidavit against this plaintiff filed in the Municipal Court of Mansfield, be set aside as insufficient, in not stating any crime and being void.

4. That the judgment of conviction of this plaintiff be set aside and held for naught, for want of jurisdiction of said Court to entertain the action.

5. That the judgment of conviction of this plaintiff be set aside and held for naught, for want of jurisdiction of the Municipal Court of Mansfield to make and enter said judgment.

6. That said City be required to furnish a sanitary prison fit for human occupancy, with police protection for this plaintiff before he is confined therein.

7. That said City be required to furnish plaintiff with good, adequate and sufficient medical, surgical and hospital care and attention during and after such confinement.

8. That the plaintiff be awarded a money judgment against said defendants in the amount of Two Hundred Fifty Thousand ($250,000.00) dollars.

HERSCHEL G. HOLLAND,
H. M. RUST.

(Verification omitted.)

INTERROGATORIES TO THE PLAINTIFF (In Part).

(Filed November 12, 1954.)

and

ANSWERS THERETO.

(Filed December 31, 1954).

Interrogatory No. 2:

(B) State specifically in what manner and in what respect or respects said act or acts interfered with or involved said right or rights to:

(5) hold real and personal property.

(C) State the time and place where said act or acts were done.

INTERROGATORY #2.

(B) 5. By forcibly withholding him from being with his family, by forcibly searching and shaking down his person and taking his property, and by failing to give him police protection against injury and infection of his body, and by not having the Mansfield City Prison in charge of a responsible person, a station-keeper.

(C) In the Mansfield City Prison, located in the City of Mansfield, on November 6, and 7, 1950, and on the respective dates the trials were held.

Interrogatory No. 3:

(A) State specifically what act or acts of defendant Glenn W. Marriott interfered with you in any right or rights enjoyed by white citizens of the State of Ohio to:

(5) hold real and personal property.

(C) State the time and place where said act or acts were done.

INTERROGATORY #3.

(A) 5. Considering my physical body as personal property, he advised and instructed the police to strike, abuse and beat up citizens of the United States that they have in their custody, of which this plaintiff was one, and of which treatment he approved of in his statement to the jury and which he had published in the Mansfield News Journal. In trying and convicting this plaintiff without due process of law.

(C) I am unable to state when he commenced so advising and instructing the officers, he spoke of it as being well established course of conduct, when he so informed the jury on the last day of trial, he had it reported in the Mansfield News Journal, a daily newspaper, shortly after that.

Interrogatory No. 5:

State by what fact, reason or reasons, you claim that Section 200 of the Ordinances of the City of Mansfield does not comply with delegation of power to municipalities provided in the General Code of Ohio, and is beyond the scope of powers delegated to municipal corporations.

INTERROGATORY #5.

By condemning conduct which the statute permits, the statute is limited to the night season, and to conduct set forth therein, in the streets and other public places to

the annoyance of the Citizens, these matters are not contained in the ordinance, and the statute and ordinance are in conflict.

Interrogatory No. 6:

State in what respect or respects you claim said ordinance to be vague and uncertain and of no determinative meaning.

INTERROGATORY #6.

The ordinance forbids that which is unusual and unnecessary, without defining the same or setting up any standards by which this can be determined by the citizen, this is left to the whim and caprice of the complainant subject to the whim and caprice and concurrence of the complainant's judgment by the Court. This ordinance appears to be for the purpose of suppressing noise, and does not give the citizen any notice as to what conduct of his is permitted or forbidden, drunken behavior is a term not known to the common law, or defined by statute in Ohio, or by the ordinances of Mansfield. It does not state or define any conduct.

Interrogatory No. 11:

(A) State whether or not you requested medical attention while confined in the Mansfield City Prison on the occasion described in the complaint herein.

(B) If the answer to (A) above is in the affirmative, state when and to whom you made the request or demand and whether or not it was granted.

INTERROGATORY #11.

(A) Yes.

(B) I asked Varga twice before I was put in the cell and refused. After I was put in the cell, Varga came to cell three times and looked at me, and I asked him three times to get a doctor or take me to the hospital, he refused me.

Interrogatory No. 12:

State by what fact, reason, reasons, or authority you claim that the affidavit filed in the Mansfield Municipal Court by the defendant Edward G. Varga does not set forth any facts constituting a crime.

INTERROGATORY #12.

It does not set forth any conduct of this plaintiff forbidden by law, or that it was in the night season, a public place or to the annoyance of citizens, and did not give notice of any conduct forbidden so as to be due process of law upon which a warrant could be issued.

Interrogatory No. 13:

State precisely by what fact, reason, reasons or authority you claim that the action of Judge Glenn W. Marriott in ordering a jury impaneled violated the statutes of the State of Ohio.

INTERROGATORY #13.

The statute requires juries to be chosen and summoned in accordance with a rule of the Court, rule ten of the Court the judge to write in a panel the names of 18 electors in the city of Mansfield or Township of Madison and file the same with the Clerk. The order of the Court was to impanel a jury from Richland County, rule or rules of the Court to the contrary notwithstanding, and contained persons not qualified to set on the jury, and who were permitted to set on the jury. The jury should have been drawn according to the state statute G. C. 13443.

Interrogatory No. 14:

(A) State where, when, how, and under what circumstances the juries were challenged as not being lawful juries.

(B) State whether or not said challenge was in writing.

(C) State whether or not it was over-ruled.

(D) State whether a written record was made at the proceedings, and, if so, whether said record discloses your challenge and/or objection.

INTERROGATORY #14.

Before the jury were seated on the day of trial, by a challenge to the array of jurors, in writing filed before the trial, it was over-ruled, a written record was made at the proceedings and shows part of the challenge and objection.

Interrogatory No. 18:

State precisely the fact, reason, reasons or authority by which you claim that Judge Glenn W. Marriott was without jurisdiction in the premises to try you on the charge as set forth in the complaint.

INTERROGATORY #18.

Glenn W. Marriott was not a fair and impartial judge, he did not have any return of summons or warrant, and instead of arraigning me according to law, he berated me for pleading not guilty, told me that a lawyer could do me no good, and that I would never win a case in his court as long as he was the judge. In proceeding upon a void affidavit not stating any offense, under a void ordinance, with an illegal jury, which was then denied me, by usurping their functions with the opinions of witnesses as to the guilt of this plaintiff, by not charging the jury with the necessary and correct law, his remarks to the jury after their return as to the defense being fantastic, and his approval of the brutality of the officers and his advice to them in the past that they were to continue it. In assessing a penalty many times that usually assessed.

In proceeding in a misdemeanor when the state of Ohio, by its constitution, statutes and the interpretation and application of them by the courts with the approval and judgment of the court of last resort, does not furnish a citizen of the United States with due process of law, in misdemeanor cases. The authority for this is the 14th Amendment.

Interrogatory No. 20:

If you claim to be a citizen of the United States,

(A) State specifically how, where, and when you were deprived of any rights, liberty, privileges and immunities secured to you by the Constitution and laws of the United States as a citizen thereof; and

(B) Name specifically the rights, liberty, privileges and immunities secured to you by the Constitution and laws of the United States of which you were deprived; and

(C) State specifically the time and place you were deprived of said rights, liberty, privileges and immunities.

INTERROGATORY #20.

(A) On the streets of Mansfield, Ohio, and at the Mansfield City Prison, on November 6th and 7th, 1950, and in the Municipal Court of Mansfield, Ohio on the days of my trial therein.

(B) My right to have and enjoy my property, including my marital and parental rights, time lost from my employment, my rights to due process of law, my right to liberty.

(C) On November 6th and 7th, 1950 and on the days of the trials, on the streets of Mansfield, Ohio, in its City Prison and in its Municipal Court.

LESLIE R. ULRICH, of
JAMISON, ULRICH, HOPE, JOHNSON & BURT.

ROBERT E. MABEE,
LYDON H. BEAM, of
BEAM AND BEAM,

Attorneys for Defendants

(Answers verified by Frank Cuiksa.)

DEPOSITION OF FRANK CUIKSA.

(Filed June 23, 1955.)

* * * * *

(50) Q9. Then you were taken to the Mansfield police station were you? (51) A. Yes.

Q1. And what was done when you first arrived? A. They took me out of the cruiser, they took me in a hallway and searched me down, took all my belongings out of me and—

Q2. Interrupting—Did they give you a receipt? A. No.

Q3. You got them back? A. Yes, sir.

Q4. Then you were put in the bullpen? A. Right, I was shoved in the bullpen.

Q5. And were you beat or struck after you arrived at the police station? A. You mean after I was put in behind the cell?

Q6. After you arrived at the police station? A. Yes.

Q7. Who did that? A. Harper and O'Niel and Varga pushed me from one of the corners like a basketball.

Q8. Did they strike you? A. They was pushing me.

Q9. Did they strike you? A. They bounced me against the side of the wall.

Q10. Did they hit you? A. Right, they pushed me with their hand, just like me pushing you against the chest like that.

Q11. Did it hurt you any? A. Sure.

Q12. At the time or later on? A. It hurt me at the time and later on.

(52) Q1. Both? A. That is right.

Q2. Did they hit you with their fist? A. They hit me with their hand.

Q3. But not with their fist, with their open hand was it? A. That is right.

Q4. And then they put you in the bullpen did they? A. Yes.

Q5. And when did you next leave there? A. The next morning they took me out, they took me up to the courtroom.

Q6. And that was in front of Judge Marriott? A. Yes.

Q7. What was done up there? A. I went up to the courtroom and stood in the row and when the time came to make my conviction they asked what I was tried for, Varga told them for drunk and I told the Judge then, I said "I want you to look, you see the side of my face how it is skinned up, I am not drunk, the policeman beat me up." The Judge said, "you will have to plead guilty, lawyer or anybody else won't do you any good as long as I am a Judge to sue the case" and that was it. Everybody that was locked up in the bullpen with me that same night heard it.

* * * * *

MOTION OF DEFENDANT THE CITY OF MANSFIELD FOR SUMMARY JUDGMENT UNDER RULE 56.

(Filed September 7, 1956.)

The defendant the City of Mansfield severally moves the Court under Rule 56 of the Federal Rules of Civil Procedure to enter judgment in its favor on the ground that it is entitled to judgment as a matter of law and that there is no genuine issue as to any material fact in this action, as appears from the pleadings and the deposition of the plaintiff filed herein.

LESLIE R. ULRICH, OF
JAMISON, ULRICH, HOPE, JOHNSON & BURT,
ROBERT E. MABEE,
LYDON H. BEAM OF
BEAM AND BEAM,

Attorneys for Defendant the City of Mansfield.

(A like motion was filed on the same date by defendant Glenn W. Marriott.)

ORDER DISMISSING COMPLAINT.

(Filed February 6, 1957.)

Upon consideration,

IT IS ORDERED that the motions of Defendants Glenn W. Marriott and The City of Mansfield for summary judgment are hereby granted.

IT IS THEREFORE, ORDERED that the complaint herein is hereby dismissed as to Defendants Glenn W. Marriott and The City of Mansfield.

JAMES C. CONNELL,
United States District Judge.